

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policies and Rules)
Governing Interstate Pay-Per-Call)
and Other Information Services)
Pursuant to the)
Telecommunications Act of 1996)
)
In the Matter of)
)
Policies and Rules Implementing)
the Telephone Disclosure and)
Dispute Resolution Act)

CC Docket No. 96-146

DOCKET FILE COPY ORIGINAL

CC Docket No. 93-22

COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.

Excel Telecommunications, Inc. ("Excel"), by its attorneys and pursuant to the Commission's Order and Notice of Proposed Rulemaking released July 18, 1996 ("Order and Notice"), hereby submits its initial comments in the above-captioned proceeding.

I. INTRODUCTION

Excel is one of the fastest growing providers of long distance telecommunications services in the U.S. As a reseller which commenced operations in 1989, Excel provided service to approximately 3.1 million residential and small business customers as of March 31, 1996. The Company offers a variety of long distance services and products, including residential service, commercial service, 800 service, international services and calling cards. Excel's continuing growth has resulted in the company's recent participation in an initial public offering, and Excel is now traded on the New York Stock Exchange. Since consumers can access information

services via Excel's services, Excel stands to be impacted by the instant proceeding.

As a general matter, Excel believes that the Commission's proposed Rules will diminish the possibilities for abuse in connection with pay-per-call services. While the Commission's proposed amendments to its existing Rules track Section 701 of the Telecommunications Act of 1996 ("1996 Act") virtually verbatim, Excel believes that the Commission's Rules should address the impact which the proposed Rules would have upon resellers.

As shown below, the amendments to the Communications Act of 1934, as amended, ("Communications Act") along with the Commission's proposed Rules would disadvantage resellers vis-a-vis facilities-based carriers since resellers would be prohibited from collecting charges from end users for calls placed over 800 numbers to information services, while facilities-based carriers could nonetheless collect transmission charges from their reseller customers for such calls. As a solution, Excel proposes that the Commission incorporate a provision into its proposed Rules clarifying that facilities-based carriers are also barred from collecting from resellers for calls placed over 800 numbers to information services for which resellers themselves are unable to collect from their end user customers.

II. THE COMMISSION'S PROPOSED RULES EXPOSE RESELLERS TO FINANCIAL LOSS

The 1996 Act adds several substantial limits on the manner in which pay-per-call or other information services may be charged to consumers. For example, the 1996 Act amends Section 228(c)(7)(E) of the Communications Act to prevent consumers from having to pay connection or usage charges for calling a toll free number for the purpose of accessing an information

service.¹ Section 228(c)(7)(C) has been amended to prohibit charging consumers for calls made through toll-free numbers to information services unless the calls are made pursuant to an explicit written presubscription agreement.²

The Commission's Order and Notice proposes Rules to implement these amendments.³ Section 64.1504 of the Commission's proposed Rules would implement the statutory requirement that end users not be charged for information services accessed through 800 toll free numbers as follows:

A common carrier shall prohibit by tariff or contract use of any 800 telephone number, or other telephone number advertised or widely understood to be toll-free, in a manner that would result in:

(a) The calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call . . .⁴

The intended effect of these changes to the Communications Act and the Commission's Rules will be to significantly shift the burden of any losses from fraud or regulatory evasion concerning information services away from consumers. The unintended effect of these changes, however, will be to impose liability for uncollectible charges directly upon resellers.⁵ As the

¹ 1996 Act, Pub. L. No. 104-104, 110 Stat. 56, at 701(a) (1996); see also Order and Notice at ¶15-16 (adopting Section 701(a)'s amendments into the Commission's Rules verbatim).

² 1996 Act at 701(a); see also Order and Notice at ¶16-18 (adopting Section 701(a)'s amendments into the Commission's Rules verbatim).

³ Order and Notice at Appendix A.

⁴ Id.

⁵ Absent Commission action in this proceeding, resellers are likely to continue incurring losses for calls placed over 800 numbers to information services after the Commission's proposed Rules take effect. For example, Excel and its customers have been victims of a toll fraud scheme which relies upon 800 numbers to access information services in Guyana and other overseas locations. As Excel can best ascertain, 800 calls are routed to a switch which then switches the

Commission knows, resellers are transactional middlemen that typically have obligations to their underlying carriers with respect to the services they purchase for resale.⁶ In other words, the amendments to the Communications Act and the Commission's Rules will prohibit resellers from charging consumers for calls placed to information services through toll-free numbers, but arguably permit underlying facilities-based carriers to collect for such calls from their customers (i.e., resellers).

Forcing resellers to unilaterally assume the costs of uncollectible pay-per-call services will impair the effectiveness of resale as well as undermine competition in the long distance marketplace. Absent adjustments to the proposed Rules to address this issue, resellers will suffer financial loss attributable to uncollectible pay-per-call charges. Such losses will hurt resellers' competitiveness against facilities-based carriers which apparently will be in a position to collect from resellers for unpaid calls to information services placed over 800 numbers. Facilities-based carriers, in effect, will be profiting at the direct expense of resellers. Moreover, resellers will continue to be in a weak position to prevent such losses from occurring.⁷ In sum, Excel believes

calls to a toll line for routing to their ultimate destination. Upon receiving their telephone bills, Excel's customers typically complain that they incurred charges for calls which were placed over 800 numbers and should have been toll free. Nonetheless, the billing data Excel receives from its underlying carriers shows the calls as chargeable toll calls, not toll-free calls. Complaining customers are typically Excel's presubscribed customers which place calls to 800 numbers issued by other carriers. Since a reseller does not control the facilities involved in the fraudulent calling, the reseller has no control over this problem.

⁶ In most cases, resellers have long term contracts in place with underlying facilities-based carriers for their purchase of transmission services. These preexisting agreements, of course, typically do not address the inability of resellers to collect from end users for calls placed to information services over 800 numbers under the 1996 Act.

⁷ Excel is currently developing methods of identifying and blocking specific numbers and country codes that are associated with fraudulent or rulebreaking pay-per-call services. In addition, Excel continues to formulate policies designed to manage, inform and contain the use

that adoption of the Commission's Rules as proposed (without addressing the issue raised herein) would effectively undermine resale and impair competition in the long distance industry.

III. THE COMMISSION SHOULD ENSURE THAT RESELLERS DO NOT ABSORB THE COSTS OF DISPUTED CHARGES FOR INFORMATION SERVICES

In order to prevent resellers from bearing an inordinate burden for the costs of disputed or uncollectible information service charges, Excel believes that the Commission should adopt rules providing that resellers are not liable to their underlying facilities-based carriers for uncollectible charges for calls placed to information services over 800 numbers, just as consumers are not liable to the resellers. If a reseller is unable to collect from an end user for such calls because of the amendments to the Communications Act as well as the Commission's Rules, underlying carriers similarly should be prohibited from collecting from resellers for such calls to the extent that the underlying carriers' transmission facilities were used to carry those calls. It was clearly Congress' intent in drafting Section 701(a) of the 1996 Act that carriers not collect for calls placed to information services over 800 numbers, and Excel believes this intent extends to facilities-based carriers.

As a result, Excel proposes that the Commission add a provision to proposed Section 64.1504 which makes clear that facilities-based carriers are prohibited from collecting from resellers charges which represent calls placed over 800 numbers to information services for which


of pay-per-call services by its customers. However, Excel's experience has shown that businesses engaged in 800 number abuse switch their offerings over multiple 800 numbers as well as operate under multiple identities, making blocking/screening strategies ineffective. Moreover, as indicated supra at n. 5, it is the facilities-based carriers (not resellers such as Excel) which control the facilities that are being abused and thus are in the best position to resolve the problem.

the resellers themselves are unable to collect. Such a rule could be readily implemented since resellers can identify (and supply to billing facilities-based carriers) those calls placed to information services over 800 numbers for which they cannot collect.

IV. CONCLUSION

As demonstrated above, the amendments to the 1996 Act along with the Commission's proposed Rules would disadvantage resellers such as Excel since they would be unable to collect charges from end users for calls placed over 800 numbers to information services, but would nonetheless be required to pay underlying facilities-based carriers for the costs of such calls. Excel proposes that the Commission incorporate a provision into its proposed rules which would clarify that facilities-based carriers are prohibited from collecting from resellers charges which represent calls placed over 800 numbers to information services for which the resellers themselves are unable to collect.

Respectfully submitted,



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